

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF TEACHING

In the Matter of the Teaching Licenses
of William G. Herman

**FINDINGS OF FACT, CONCLUSIONS
AND RECOMMENDATION**

The above-entitled matter came before Administrative Law Judge Steve M. Mihalchick on April 25, 2006 for a prehearing conference scheduled in a Notice of and Order for Hearing and Prehearing Conference dated March 17, 2006.

Bernard E. Johnson, Assistant Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, MN 55101-2134, appeared on behalf of the Minnesota Board of Teaching (Board).

Respondent, William G. Herman, 3521 Zinran Ave S, St. Louis Park, MN 55426-3829, did not appear in person or by counsel.

The record closed on April 25, 2006.

NOTICE

This Report is a recommendation, not a final decision. The Board of Teaching will make the final decision after a review of the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Allen E. Hoffman, Executive Director, Minnesota Board of Teaching, 1500 Highway 36 West, Roseville, MN 55113 to ascertain the procedure for filing exceptions or presenting argument.

If the Board of Teaching fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.61, this report becomes the final decision. To comply with Minn. Stat. § 14.62, subd. 2a, the Board must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

STATEMENT OF ISSUE

Whether Respondent failed, without justifiable cause, to teach for the term of his contract in violation of Minn. Stat. § 122A.20, subd. 1(a)(2).

Should the Respondent's teaching licenses be revoked or suspended for such failure and violation?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On March 21, 2006, the Board served a copy of the Notice of and Order for Hearing and Prehearing Conference via first class mail to Respondent at Respondent's last known address on file with the Board, namely, 3700 Perry Ave N, Robbinsdale, MN 55422. The Notice was not returned to the Board.

2. On March 28, 2006, the Administrative Law Judge mailed some information sheets to Respondent at the address above and to the Board. The envelope to Respondent was returned on March 31, 2006, with a forwarding address notice listing 3521 Zinran Ave S, St. Louis Park, MN, as Respondent's new address. The information was resent to Respondent at that address and has not been returned.

3. The Respondent did not appear at the prehearing conference, did not obtain the ALJ's prior approval to be absent from the prehearing conference, did not file a Notice of Appearance, and did not request a continuance or any other relief.

4. The Notice of and Order for Hearing, Notice of Prehearing Conference, and Statement of Charges contained the following informational warning, in bold print:

The Respondent's failure to appear at the prehearing conference or the hearing may result in a finding that the respondent is in default, that the Board's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

5. Because Respondent failed to appear, he is in default.

6. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice of and Order for Hearing and Prehearing Conference are taken as true and incorporated by reference into these Findings of Fact. Thus, it is found that Respondent signed a teaching contract with ISD No. 281 to teach full time from September 9, 2004, through June 9, 2005, and that on April 28, 2005, he informed his school principal that he was quitting, left the school, and did not return.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Board of Teaching are authorized to consider the charges against Respondent under Minn. Stat. §§ 122A.20, subd. 1(a)(4), 214.10, and 14.50.

2. Respondent received due, proper and timely notice of the charges against him, and of the time and place of the prehearing conference. This matter is, therefore, properly before the Board and the Administrative Law Judge.

3. The Board has complied with all relevant substantive and procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of her failure, without the ALJ's prior consent, to appear at the prehearing conference.

6. Minn. Stat. § 122A.20, subd. 1(a)(2) provides that the Board may suspend or revoke a teacher's license to teach for, among other things, failure, without justifiable cause, to teach for the term of the teacher's contract.

7. Respondent failed to teach for the term of his 2004-2005 contract with ISD No. 281. Respondent has not demonstrated justifiable cause for his failure. Thus, he has violated Minn. Stat. § 122A.20, subd. 1(a)(2).

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that Board of Teaching take adverse action against Respondent's license.

Dated: May 8, 2006

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Default (no tapes)

MEMORANDUM

Notice was properly given to Respondent at his address on record with the Board. It appears that Respondent may have a new address. If Respondent does receive this Report, he should contact Mr. Johnson at 651-296-1801 to discuss his status.